object, from its effect on the conduct of others. The numerical weight of authority permits such a determination. In addition to the cases cited in the principal case see: *Jones* v. *Malvern Lumber Co.*, 58 Ark. 125; *Burns* v. *Sennett*, 99 Cal. 363; *Taylor* v. *Star Coal Co.*, 110 Ia. 40; *McMahon* v. *McHale*, 174 Mass. 320; *Belleville Stone Co.* v. *Comben*, 61 N. J. L. 353; *McGar* v. *Worsted Mills*, 22 R. I. 347; *Fritz* v. *Tel. Co.*, 25 Utah 263; *Richmond* v. *Ford*, 94 Va. 627. For the opposite view see: *Hartford Deposit Co.* v. *Sollitt*, 172 Ill. 222; *Helfenstein* v. *Medart*, 136 Mo. 595. On principle the principal case seems sound. However, it must be remembered that such facts are allowed merely as evidence and not as a standard of conduct, because *everyone* in the same business might be negligent. *Maynard* v. *Buck*, 100 Mass. 40. Also the conduct of others must have occurred under similar circumstances. *Congdon* v. *Howe Scale Co.*, 66 Vt. 255. And the admission of such evidence should be in the trial court's discretion, in order to avoid a confusion of issues. *Hill Mfg. Co.* v. *P. & N. Y. Co.*, 125 Mass. 292; *McMahon* v. *McHale*, 174 Mass. 320.

MUNICIPAL CORPORATIONS—DEFECT IN STREET—ACTION FOR INJURIES—PARTIES LIABLE.—Plaintiff recovered judgment below against defendant Paving Company for personal injuries caused by falling off the edge of a sidewalk into a ditch. The sidewalk had been completed by the defendant Company in accordance with plans furnished by the city engineer and had been accepted by the engineer in charge of the improvement district three days previous to the accident. The evidence clearly showed an absence of reasonable precautions in respect to a guard-rail or lights. *Held*, judgment should be reversed and case dismissed. *Memphis Asphalt & Paving Co.* v. *Fleming* (1910), — Ark. —, 132 S. W. 222.

The general rule here applicable is that, after the contractor has turned the work over and it has been accepted by the proprietor, the contractor incurs no further liability to third parties by reason of the condition of the work; but the responsibility, if any, for maintaining or using it in its defective condition is shifted to the proprietor. *Fitzmaurice* v. *Fabian*, 147 Pa. St. 199, 23 Atl. 444; *First Presbyterian Cong.* v. *Smith*, 163 Pa. 561, 30 Atl. 279, 26 L. R. A. 504, 43 Am. St. Rep. 808; THOMPSON, NEGLIGENCE, § 686; *Daugherty* v. *Herzog*, 145 Ind. 255, 44 N. E. 457, 32 L. R. A. 837, 57 Am. St. Rep. 204; *Salliotte* v. *King Bridge Co.*, 122 Fed. 378, 58 C. C. A. 466, 65 L. R. A. 620. This rule is subject to some qualifications, among them the cases where the work is a nuisance per se, or where it is turned over by the contractor in a manner so negligently defective as to be imminently dangerous to third persons. Lord COLONSAY in *Daniel* v. *Metropolitan R. Co.*, L. R. 5 H. L. 63; *Bower* v. *Peate*, 1 Q. B. D. 321; *Pickard* v. *Smith*, 10 C. B. (N. S.) 470; *Norwalk Gas Light Co.* v. *Norwalk*, 63 Conn. 495, 28 Atl. 32. Cases where the thing was imminently dangerous are: *Thomas* v. *Winchester*, 6 N. Y. 397; *Coughtry* v. *Globe Woolen Co.*, 56 N. Y. 124. The court in discussing the principal case with respect to the qualifications above set forth says that the case does not come within them. No authority is cited to prove this statement and it might be difficult to appreciate its accuracy in view of the

evidence were it not for the additional fact that the work was constructed in accordance with plans furnished by the city engineer which fact presumably lent a different aspect to the case.

NEGLIGENCE — CONTRIBUTORY NEGLIGENCE — VOLUNTARY ACTS. — The employes of defendant telephone company negligently removed a service cock from a city water main, permitting the water to be forced into the open window of apartments of which plaintiff was housekeeper. In attempting to close the window to prevent injury to the room and its contents, she was knocked down and had her clothing soaked with water, causing her to become ill. *Held,* that since plaintiff's act was voluntary, she assumed the consequences of getting wet and could not recover. *Taylor* v. *Home Telephone Co.* (1910), — Mich. —, 128 N. W. 728.

The principle underlying this decision, and expressed in the maxim, "volenti non fit injuria," has been stated as follows: "One who, knowing and apprehending a danger, voluntarily assumes the risk of it, has no just cause of complaint against another who is primarily responsible for the existence of the danger." *O'Maley* v. *Gaslight Co.,* 158 Mass. 135, 32 N. E. 1119, 47 L. R. A. 161. Courts have frequently refused to so apply this principle as to deny the right to recover damages to one who has at actual risk of injury sought to save property, where his effort has been such as a reasonably prudent man would have made under similar circumstances. *Thompson* v. *Seaboard Air Line R. Co.* (1908), 81 S. C. 333, 62 S. E. 396, 20 L. R. A. (N. S.) 426; *Henry* v. *Cleveland etc. R. Co.,* 67 Fed. 426; *Berg* v. *Great N. R. Co.,* 70 Minn. 272, 73 N. W. 648; *Pullman Palace Car Co.* v. *Laack,* 143 Ill. 242, 32 N. E. 285, 18 L. R. A. 215; but other courts hold that a person who voluntarily places himself in a position of danger simply for the protection of property, is negligent so as to preclude recovery for an injury received. *Cook* v. *Johnson,* 58 Mich. 437, 25 N. W. 388, 55 Am. Rep. 703; *Morris* v. *Lake Shore etc. R. Co.,* 148 N Y. 182, 42 N. E. 579; *Condiff* v. *Kansas City etc. R. Co.,* 45 Kan. 256, 25 Pac. 562; *Seale* v. *Gulf etc. R. Co.,* 65 Tex. 274, 57 Am. Rep. 602. In view, however, of the duty which the law casts upon the owner of property to minimize the loss caused by another's willful or negligent act, it is difficult to see why the attempt of a third person to minimize the loss of the negligent party, as in the principal case, should be allowed to be used by the latter as a ground of defense in an action for damages for an injury resulting from such attempt.

PRINCIPAL AND AGENT—INTOXICATING LIQUORS—ILLEGAL SALES TO MINOR. —The agent of defendant, a licensed saloon keeper, delivered liquor to a minor, under the belief that the minor was buying as agent for another, whose identity was unknown and was not disclosed. *Held,* that this constituted a sale to the minor, under a statute forbidding a sale to a minor, even though the one for whom the liquor was bought was an adult. *State* v. *Nichols* (1910), — W. Va. —, 69 S. E. 304.

Cases upon a similar state of facts are constantly coming before the courts. There is no question on principle and on authority that if the principal is disclosed there is no sale to the minor agent. *Monaghan* v. *State,* 66